

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARK LEYSE and all others similarly situated,  
Plaintiffs,

-against-

BANK OF AMERICA, NATIONAL  
ASSOCIATION,

Defendant.

1:09-CV-7654 (JGK) (AJP)

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that, upon the Amended Complaint, dated September 23, 2009, and the accompanying Declaration of Kyle Mooney, dated October 5, 2009, Defendant Bank of America, National Association ("Bank of America") will renew the motions pending when the Amended Complaint was filed and move this Court, at the United States District Courthouse, 500 Pearl Street, New York, New York, before the Honorable John G. Koeltl for an Order:

(1) dismissing the Amended Complaint for lack of standing pursuant to Federal Rule of Civil Procedure 12(b)(1), or based on the first-filed *Dutriaux v. Bank of America, National Association*, 05-cv-3838-JGK (S.D.N.Y.); or, in the alternative, staying this action pending resolution of the appeal in *Holster v. Gatco, Inc.*, 485 F. Supp. 2d 179 (E.D.N.Y. 2007), *aff'd without opinion*, No. 07-2191 (2d Cir. Oct. 31, 2008); and

(2) awarding Bank of America the attorneys' fees and costs incurred in connection with this action.

October 5, 2009

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